58TH CONGRESS, 2d Session. } SENATE. { REPORT No. 2145.

AMENDMENT TO INDIAN DEPREDATION ACT.

APRIL 14, 1904.—Ordered to be printed.

Mr. ALLEE, from the Committee on Indian Depredations, submitted the following

REPORT.

[To accompany S. 275.]

The Committee on Indian Depredations, to whom was referred the bill (S. 275) to amend an act entitled "An act to provide for the adjudication and payment of claims arising from Indian depredations," approved March 3, 1891, having had the same under advisement, make the following report and recommend that the bill do pass.

The present bill is identical in its provisions with S. 3544, Fifty-seventh Congress, first session, as amended and reported by this committee on May 9, 1902.

The general purpose of this bill is to remove from the jurisdictional act of March 3, 1891, the requirement that the person who owned the property at the time of its taking by the Indians must have been within the strict requirements of the law a citizen of the United States.

The intention of the committee is that the remedial legislation proposed shall be restricted within the limits of the historic policy of the United States regarding the Indians, as this is conceived by the committee. The effect of the amendment proposed by the committee is to remove from the jurisdictional act the requirements of citizenship alone, a change of the present law being deemed necessary, in this respect, to conform with the preexisting laws.

The origin of these claims for compensation for depredations committed by Indians was in the trade and intercourse act of June 30, 1834 (Rev. Stat., sec. 2156), though this act itself merely undertook to redeem a promise first made by Congress in 1796 of "eventual indemnification" for depredations committed by Indians. But neither in these acts nor in any of the subsequent statutes down to that of March 3, 1885, relating to reimbursement, and fixing the procedure by which it was to be obtained, was there any requirement that the person suffering the loss should have been a citizen of the United States, "inhabitants" as well as citizens being embraced within the benefits of the acts.

Not only is this requirement of citizenship a departure from the established policy of the Government but, in the opinion of the committee, it has resulted in much injustice to pioneers of the West who suffered losses at the hands of the Indians. Of the persons who have suffered through this discrimination in the law many, although foreign born, lived from their early youth in the United States and died here, but were never naturalized, the greater portion of their lives having been spent in those remote regions where access to the courts was difficult and costly—where, indeed, there was in those days little thought of courts. Some others, who came to this country in their infancy, undertook after they became of age to be naturalized, but, under wrong advice, executed merely the preliminary declaration of intention instead of taking the oath of allegiance, which alone is required in such cases.

Many others were in fact naturalized, as their descendants and neighbors are convinced, and as their exercise of the rights of citizenship indicates, but died without leaving any memorandum or suggestion of the place where the naturalization was had, and their descendants are therefore not able to find the records and prove the fact. Others were inhabitants, but not citizens, of the Republic of Texas, and wrongly assumed themselves to have become citizens of the United States through the annexation of the Republic. Others, living in the original Territory of Nebraska, have relied on an incorrect but not entirely unreasonable construction of the act admitting that State into the Union, and have never, according to the definitions established by the courts, perfected their citizenship. A number of others, foreign born, served as soldiers in the United States Army or Navy in one or more wars, and have supposed that the oath they took on their enlistment made them citizens of the United States; but although as a rule they are drawing pensions from the Government they are not in a strict legal sense citizens of the United States and can recover nothing under this act of 1891.

Most of the men thus excluded from the benefits of the law have, without challenge or question, exercised all the rights of citizenship. Many have held important State and county offices and have been leaders in all public movements in their respective sections. One was actually a Delegate in Congress from the Territory of his residence.

The amount by which the bill as introduced would increase the liability of the Indians and the contingent liability of the United States has been estimated at from $3,000,000 to $5,000,000, the latter sum being suggested to the committee by the Attorney-General and the former being the estimate of advocates of the bill who have appeared before the committee.

No separate estimates have been furnished as between the amendments relating, respectively, to amity and citizenship, but it is conceded by all that by far the larger part of the increased liability would be chargeable to the elimination of the requirement of amity.

To meet the views herein expressed the committee propose amendments to sections 1 and 4 of the bill. Sections 2 and 3 relate to questions of practice which have heretofore been controverted in the court, and their purpose is merely to put into the text of the law the conclusions reached by the court. The Attorney-General, in his letter of advice to the committee, offers no criticism of these sections.

Your committee submits as a part of their report a communication from the Attorney-General upon the pending bill.

DEPARTMENT OF JUSTICE,
Washington, D. C., March 10, 1902.

SIR: In compliance with the request contained in your letter of February 14, I have the honor to submit the following observations on the bill "to amend an act entitled 'An act to provide for the adjudication and payment of claims arising from Indian depredations,' approved March 3, 1891" (S. 3544). In some respects my comment on this bill is the same as that contained in my letter of even date in regard to Senate bill No. 3539, but as that bill contains provisions not found in this, and in other respects seeks to effect indirectly and by less certain and definite language the object which in this bill is directly attained, I have deemed it best to make separate reply in regard to each bill.

The act of March 3, 1891, provided that the Court of Claims should have jurisdiction over "all claims for property of citizens of the United States taken or destroyed by Indians belonging to any band, tribe, or nation in amity with the United States, without just cause or provocation on the part of the owner or agent in charge, and not returned or paid for."

Under this act 10,841 claims have been filed, aggregating in the amount claimed more than $43,000,000. Many of these claims are for depredations committed by Indians belonging to tribes which were at the time in a state of tribal warfare against the United States. In opposition to these claims the defendants pleaded the clause of the statute requiring amity, and the Court of Claims, in the case of Marks et al. *v.* The United States and the Bannock Indians (28 Ct. Cls. R., 147), sustained the defendants' contention and dismissed the petition. This decision was afterwards affirmed by the Supreme Court of the United States. (161 U. S., 297.) Under this decision hundreds of cases have been dismissed, and many others will be dismissed when they are reached. Also, in many cases where the claim included losses attributed to two or more separate depredations a part of the claim was eliminated by the same defense.

Another requirement of the original statute is that the claimant must have been a citizen of the United States at the time of the depredation. (Valk *v.* The United States et al., 28 Ct. Cls. R., 197; 168 U. S., 703; Johnson *v.* The United States et al., 160 U. S., 546.)

Many of the claims filed are for depredations upon the property of aliens, and some are for depredations upon the property of foreign corporations; and such petitions have been and are being dismissed on that ground.

The bill under consideration eliminates the defense based upon the want of amity between the United States and the tribe whose members are charged with the depredation by substituting for the words "in amity with the United States" the words "subject to the jurisdiction of the United States."

The same section of the bill provides also for the elimination of the requirement of citizenship by adding after the word "citizens" the words "or inhabitants."

The second section of the bill deals with a question which is still before the courts. It was in one case held by the Court of Claims that where the claimant sued the United States and a tribe of Indians, and the evidence when taken showed that the depredation charged was committed by members of another tribe than the one joined in the petition, the claimant might amend at any time before final judgment. (Duran's case, 31 Ct. Cls. R., 353.) Subsequently, upon an intimation from the court that the question was being reconsidered, another case involving the same question was presented; and that case has just been decided by the Court of Claims. If the recent decision, following the decision in the Duran case, is sustained by the Supreme Court, the effect will be the same as if the proposed amendment in section 2 were adopted. While the result of such a decision or of such an amendment would be in contravention of the ordinary rules of pleading, and while it would be a hardship, in some instances, upon tribes who have been represented in court by attorneys specially employed to defend their interests, it would, in the greater number of cases, be simply the elimination of a technical defense, and would involve no hardship upon the Government or the Indian tribes.

Section 3 of the bill provides for the substitution by amendment of the parties in interest in cases where the suit was originally commenced by one who was not in his own right entitled to recover. The practice of the Court of Claims is extremely liberal in the allowance of amendments; and while the provision in question would admit of recovery in some cases where the suit was erroneously instituted and can not be amended under the present law, it would not affect a very considerable number of cases.

Section 4 of the bill, providing for the reinstatement of cases embraced within its provisions which have heretofore been dismissed, is, of course, altogether proper if the act is to be amended.

Your letter transmitting the bill requests an estimate of the amount of the liability

of the United States which would probably be adjudged under its provisions. For the reasons stated above, the increase in such liability, affected by the amendments proposed in the bill, would result principally from the elimination of the defenses of amity and citizenship. The number of cases which would be thus affected is large, and the amount involved is a matter of considerable doubt. In a former letter from the Department in regard to a similar bill it was estimated that the amount claimed in such cases would approximate 40 per cent of the total amount claimed in all cases, or about $17,000,000. This amount would probably undergo a reduction of more than 50 per cent in the process of adjudication through the rejection of insufficiently proven cases and the reduction of inflated valuations, so that on the basis of that estimate of the total amount claimed it was then deemed probable that the amount finally involved would be about $8,000,000.

It is now believed, in the light of subsequent investigation, that this estimate was somewhat excessive, and that $5,000,000 would probably cover the actual judgments in favor of the claimants, which would thus be added to those rendered and to be rendered under the existing law. This estimate can be only an approximation, as no sufficient data are available for anything like an exact computation of the amount; but it is believed that the true amount will not vary from the estimate by more than $1,000,000.

Your committee is no doubt familiar with the fact that, in excluding from consideration under the act of March 3, 1891, the claims which grew out of depredations committed by hostile tribes, Congress followed the uniform practice in dealing with such claims.

Act of May 19, 1796, sec. 14 (1 Stat. L., 172).
Act of March 3, 1799, sec. 14 (1 Stat. L., 747).
Act of March 3, 1802, sec. 14 (2 Stat. L., 143).
Act of June 30, 1834, sec. 17 (4 Stat. L., 731).
Revised Statutes, sec. 2156.

In regard to the question of citizenship the situation is somewhat different. In the statutes referred to above, which promise eventual indemnification for losses suffered at the hands of Indians belonging to tribes in amity with the United States, there was no discrimination in favor of citizens of the United States, provision being made in each instance for depredations upon property "belonging to any citizen or inhabitant of the United States." The requirement of citizenship was first made in the act of March 3, 1885 (23 Stat. L., 376), authorizing the investigation by the Secretary of the Interior of certain Indian depredation claims "on behalf of citizens of the United States."

In the adjudication of the claims filed under the act of March 3, 1891, the determination of these two questions—amity and citizenship—has involved great labor and expense. The question of amity has been especially productive of litigation, since it has been necessary, after the general question had been decided by the Court of Claims and that decision affirmed by the Supreme Court, to determine the actual status of each band or tribe of Indians charged, and at every date when depredations were committed. Inasmuch as there is usually no formal declaration of war between the United States and a tribe of Indians, their status must be determined in each case by reference to the actual relations which existed, as shown by contemporaneous reports and by the testimony of participants. The work of judicially determining such status is now practically complete.

Respectfully,

P. C. KNOX,
Attorney-General.

Hon. ROBERT J. GAMBLE,
Chairman Committee on Indian Depredations, United States Senate.

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